

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MARC S. KIRSCHNER,
as Trustee of the Refco Private Actions Trust,

Plaintiff,

-vs-

**PHILLIP R. BENNETT, SANTO C.
MAGGIO, ROBERT C. TROSTEN, MAYER,
BROWN, ROWE & MAW, LLP, GRANT
THORNTON LLP, and ERNST & YOUNG
U.S. LLP,**

Defendants.

Case No. 07 CV 8165 (GEL)

**DECLARATION OF MARC S. KIRSCHNER IN FURTHER SUPPORT OF
PLAINTIFF'S MOTION TO REMAND TO NEW YORK STATE COURT**

Pursuant to 28 U.S.C. § 1746, Marc S. Kirschner declares as follows:

Background

1. I have personal knowledge of the matters set forth herein and make this declaration in support of Plaintiff's reply memorandum to remand the above-captioned action (the "New York Action") to New York State Supreme Court.

2. I am an attorney admitted to practice law in the State of New York. I was formerly a partner with the law firm of Jones, Day, Reavis & Pogue, where I was the head of the Bankruptcy and Restructuring group in the New York office.

3. I was appointed, effective December 26, 2006, Trustee of the Non-Estate Refco Private Actions Trust (the "PAT").

4. I was also appointed, effective December 26, 2006, Trustee of the Refco Litigation Trust.

5. On August 27, 2007, in my capacity as Trustee of the PAT, I filed a lawsuit on behalf of the PAT against certain Refco insiders and three Refco professionals and advisors—Grant Thornton LLP, Mayer, Brown, Rowe & Maw, LLP¹, and Ernst & Young U.S. LLP (the "New York Action").

6. My understanding is that under the Refco Director and Officer Insurance Policies, Refco has the right to seek indemnification for any defense costs it advances to covered parties.

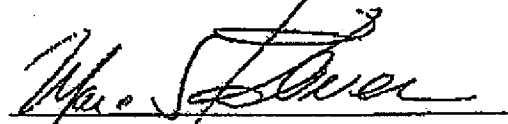
7. To date, no defense costs have been advanced by the administrator of any Refco estate to any former Refco director or officer named as a defendant in the New York Action or any other pending action commenced by the PAT, the Litigation Trust or the administrator of any Refco estate, and I am unaware of any intention to advance any such costs.

¹ While the New York State Action Complaint named Mayer, Brown, Rowe, & Maw, LLP as a defendant, around the time the New York State Action was filed, Mayer Brown changed its name to Mayer Brown LLP and Mayer Brown International LLP.

8. To the best of my knowledge and belief, no administrator of any Refco estate has sought indemnification or reimbursement under the Refco Director and Officer Insurance Policies, and I am not aware of any intention to do so in the future.

9. The bankruptcy estate of Refco Capital Markets, Ltd. is close to being fully administered, and it is my expectation that almost all -- meaning more than 95% -- of its assets will be distributed by the end of 2007.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on December 17, 2007 in New York, New York.

A handwritten signature in dark ink, appearing to read "Marc S. Kirschner", is written over a horizontal line.

Marc S. Kirschner
As Trustee of the Refco Non-Estate
Private Actions Trust